

MEMO ENDORSED

New York
Northern California
Washington DC
São Paulo
London

Paris
Madrid
Hong Kong
Beijing
Tokyo

Davis Polk

Paul S. Mishkin

Davis Polk & Wardwell LLP 212 450 4292 tel
450 Lexington Avenue paul.mishkin@davispolk.com
New York, NY 10017

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/28/2020

August 27, 2020

Via ECF

The Honorable Valerie E. Caproni
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Valelly v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 19-cv-07998 (VEC)

Dear Judge Caproni:

Plaintiff Sarah Valelly (“Ms. Valelly”) and Defendant Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”) jointly file this letter motion requesting that certain exhibits be filed under seal.

Pursuant to Rule 5(B)(ii) of the Court’s Individual Practices in Civil Cases, we respectfully request permission to file under seal Exhibits C and D to the Declaration of Paul S. Mishkin in Support of Merrill Lynch’s Memorandum of Law in Opposition to Plaintiff’s Motion for Leave to Amend Her Class Action Complaint (“Mishkin Declaration”). These exhibits are several of Ms. Valelly’s account statements from Merrill Lynch, which contain Ms. Valelly’s account numbers, personal information, and asset information. As recognized in *Lugosch v. Pyramid Co. of Onondaga*, there are “countervailing factors” to the presumption of access including “the privacy interests of those resisting disclosure.” 435 F.3d 110, 120 (2d Cir. 2006) (quoting *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995)). Such privacy interests are present here. See *In re Hornbeam Corp.*, No. 14-MC-424, 2017 WL 5515857, at *5 (S.D.N.Y. Feb. 17 2017) (bank records that reveal confidential information may be filed under seal).

Consistent with Rule 5(B)(iii)(d) of the Court’s Individual Practices in Civil Cases, Merrill Lynch will file a copy of Exhibits C and D to the Mishkin Declaration under seal on ECF.

Respectfully submitted,

The Honorable Valerie E. Caproni

2

August 27, 2020

WOLF POPPER LLP

/s/ Robert C. Finkel

Robert C. Finkel
Adam J. Blander
845 Third Avenue
New York, NY 10022
Telephone: 212.759.4600
rfinkel@wolfpopper.com

*Attorneys for Plaintiff and the Putative
Classes*

DAVIS POLK & WARDWELL LLP

/s/ Paul S. Mishkin

Paul S. Mishkin
Lara Samet Buchwald
Alexa B. Lutchen
450 Lexington Avenue
New York, NY 10017
Telephone: 212.450.4292
Facsimile: 212.701.5292
paul.mishkin@davispolk.com

*Attorneys for Defendant Merrill Lynch,
Pierce, Fenner & Smith Incorporated*

Application GRANTED in part.
Defendant must file Exhibits C and D
publicly but may redact any personal
information. Defendants may file the
unredacted exhibits under seal.

SO ORDERED.



8/28/2020

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE